

REMARKS

Claims 1-14 were examined and reported in the Office Action. Claims 1-14 are rejected. Claim 1 is amended. Claims 7-8 are canceled. Claims 1-6 and 9-14 remain.

Applicant requests reconsideration of the application in view of the following remarks.

I. 35 U.S.C. § 102(a)

It is asserted in the Office Action that claims 1, 2, 6-9 and 12 are rejected under 35 U.S.C. § 102(a) are anticipated by U. S. Patent No. 6,286,999 issued to Cappel et al. ("Cappel"). Applicant respectfully traverses the aforementioned rejection for the following reasons.

According to MPEP §2131,

[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.’ (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). ‘The identical invention must be shown in as complete detail as is contained in the ... claim.’ (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)). The elements must be arranged as required by the claim, but this is not an ipsissimis verbis test, *i.e.*, identity of terminology is not required. (In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990)).

Applicant’s claim 1 contains the limitations of

[a] bag having two walls defining a mouth of the bag, closure strips, a slider, and including a marker strip for preventing manipulation of the slider prior to the marker strip being ruptured, wherein the marker strip is made integrally with one wall of the bag in the vicinity of the mouth of the bag and includes, on an edge opposite the mouth of the bag, a single-use adhesive zone designed to fix the marker strip, in its in-use position, on the opposite wall of the bag, the marker strip being folded over as a U-shape with its concave side facing towards the mouth of the bag.

Applicant's claim 1 limitations of: "a bag having two walls defining a mouth of the bag, closures strips, a slider, and including a marker strip for preventing manipulation of the slider prior to the marker strip being ruptured" is supported by lines 7-12 of page 3, and Figures 1-4 and 6 of the Application; "the marker strip is made integrally with one wall of the bag in the vicinity of the mouth of the bag" is supported by lines 21-25 of page 3 of the Application; "the marker strip includes, on an edge opposite the mouth of the bag, a single-use adhesive zone designed to fix the marker strip, in its in-use position, on the opposite wall of the bag" is supported by lines 1-9 of page 4; and "the marker strip being folded over as a U-shape with its concave side facing towards the mouth of the bag" is supported by lines 10-13 of page 4 of the Application. Therefore, no new matter is added.

Applicant respectfully notes that in the field of plastic bags, it is not true that the expressions "permanently adhered" or "fixed" by a single-use adhesive zone" are equivalent to the expression "integrally formed with."

Cappel discloses a bag having closure strips 22, a slider 32, and includes a marker strip 40 for preventing manipulation of the slider prior to the marker strip being ruptured (see Cappel, figures 4a - 4d). In Cappel, the embodiments concerning label 40 where the sections are permanently adhered (see Cappel, column 7, lines 36-37; column 9, of lines 46-48; and Figures 4a-4d and Figures 10a-10d) are clearly different and separated from the embodiments where the tabs are "integrally formed with the body panels of the bag" (Cappel, column 10, lines 9-12, and Figures 12a-12d). Therefore the expression "formed integrally" corresponds to a technical characteristic that is clearly distinguishable from the characteristic "adhered" or "fixed." It is not true to assert that the phrase "formed integrally" is sufficiently broad to encompass the structure of Figure 4a-4d of Cappel, as asserted in the Office Action. Adhering a section to a wall is technically different from forming it integrally with a wall, and the modes of fabrication are not equivalent.

Taking this assertion into account, it should be clear that none of the embodiments described in Cappel anticipates the bag according to Applicant's amended claim 1, which is easy to fabricate and to use compared to the embodiments disclosed in Cappel.

Therefore, since Cappel does not disclose, teach or suggest all of Applicant's claim 1 limitations of a

bag having two walls defining a mouth of the bag, ... wherein the marker strip is made integrally with one wall of the bag in the vicinity of the mouth of the bag and includes, on an edge opposite the mouth of the bag, a single-use adhesive zone designed to fix the marker strip, ... the marker strip being folded over as a U-shape with its concave side facing towards the mouth of the bag,

Applicant respectfully asserts that a *prima facie* rejection under 35 U.S.C. § 102(a) has not been adequately set forth relative to Cappel. Thus, Applicant's claim 1 is not anticipated by Cappel. Additionally, the claims that directly or indirectly depend on claim 1, namely claims 2, 6, 9 and 12 (claims 7-8 being canceled), are also not anticipated by Cappel for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 102(a) rejections for claims 1, 2, 6, 9 and 12 are respectfully requested.

II. 35 U.S.C. § 103(a)

It is asserted in the Office Action that claims 3, 10, 13 and 14 are rejected in the Office Action under 35 U.S.C. § 103(a), as being unpatentable over Cappel and European Patent Application No. 0941937A1 issued to Ishizaki ("Ishizaki"). Applicant respectfully traverses the aforementioned rejections for the following reasons.

According to MPEP §2142

[t]o establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. (In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)).

Further, according to MPEP §2143.03, "[t]o establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." "*All words in a claim must be considered* in judging the patentability of that claim against the prior art." (In re Wilson, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970), emphasis added.)

Applicant's claims 3, 10, 13 and 14 either directly or indirectly depend on amended claim

1. Applicant has addressed Cappel above in section I regarding claim 1.

Ishizaki discloses a first embodiment where one fixes a seal or a cellophane adhesive tape on both panels of a bag (see Ishizaki, figure 10b). Ishizaki discloses a second embodiment where the marker strip is formed of the flaps fused together (see Ishizaki, column 8, lines 53-55). Therefore, even if Cappel were combined with Ishizaki, the resulting invention would still not teach, disclose or suggest Applicant's claim 1 limitations of a

bag having two walls defining a mouth of the bag, ... wherein the marker strip is made integrally with one wall of the bag in the vicinity of the mouth of the bag and includes, on an edge opposite the mouth of the bag, a single-use adhesive zone designed to fix the marker strip, ... the marker strip being folded over as a U-shape with its concave side facing towards the mouth of the bag.

Neither Cappel, Ishizaki, and therefore, nor the combination of the two, teach, disclose or suggest the limitations contained in Applicant's claim 1, as listed above. Since neither Cappel, Ishizaki, nor the combination of the two, teach, disclose or suggest all the limitations of Applicant's claim 1, as listed above, Applicant's claim 1 is not obvious over Cappel in view of Ishizaki since a *prima facie* case of obviousness has not been met under MPEP §2142. Additionally, the claims that directly or indirectly depend from claim 1, namely claims 3, 10 and 13-14, would also not be obvious over Cappel in view of Ishizaki for the same reason.

Accordingly, withdrawal of the 35 U.S.C. § 103(a) rejections for claims 3, 10, 13 and 14 are respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-6 and 9-14 patentably define the subject invention over the cited references of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§1.16 or 1.17, particularly, extension of time fees.

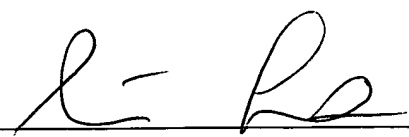
PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on February 15, 2006, Applicant respectfully petitions the Commissioner for a three (3) month extension of time, extending the period for response to August 15, 2006. The Commissioner is hereby authorized to charge payment to Deposit Account No. 02-2666 in the amount of \$1,020.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(3) large entity. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

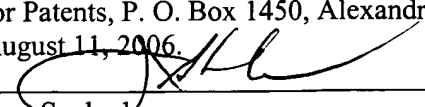
Dated: August 11, 2006

By: 
Steven Laut, Reg. No. 47,736

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Mail Stop RCE, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia 22313-1450 on August 11, 2006.


Jean Svoboda